**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 10156 of 1996**
**With**
**SPECIAL CIVIL APPLICATION No. 10157 of 1996**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE JAYANT PATEL**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**DURLABHJI TALSHIBHAI - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**
MR NAGIN N GANDHI for Petitioner(s) : 1,
MR SATYAM CHHAYA, AGP for Respondent(s) : 1,(In both the matters)
RULE SERVED for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL**

**Date : 05/02/2007**

**COMMON ORAL JUDGMENT**

1. As both the matters are inter-connected and

common question arises in both the matters, they are considered by this common judgement.

2. Respondent No.2 was holding various lands at Village Gamph and since the holding was exceeding the ceiling limit as provided under the Gujarat Agricultural Lands Ceiling Act (hereinafter referred to as “the Act”), Ceiling Cases were registered and ultimately vide order dated 25.5.1990, following lands were declared as excess land of Respondent No.2:

| Name of Village | Survey No. | Area Acre-Gunthas | |
|---|---|---|---|
| Chokdi | 102 paiki | 39-22 | (vide Resolution dated 23.12.1976) |
| Chokdi | 102 paiki | 10-09 | (vide Resolution dated 30.6.1988) |
| Chokdi | 210/40 | 27-20 | |
| Gamph | 101 paiki | 2-16 | |
| | | 80-27 | |

3. It appears that thereafter the petitioner of Special Civil Application No.10156 of 1996 purchased the land admeasuring 2 acres 60 gunthas of Survey No.105 (Old Survey No.106) at Village Gamph from Respondent No.2 by registered sale deed and as per the petitioner, the said

land was not declared as excess land and was permitted as retainable land for self-cultivation for Respondent No.2. The petitioner of SCA No.10157 of 1996 purchased another land admeasuring 5 acres and 59 gunthas bearing Survey No.100 (Old No.101) of Village Gamph and as per the petitioner, the said land was also not declared as excess land and was permitted for personal cultivation of Respondent No.2.

4. It appears that thereafter when the possession of the excess land was to be taken, as on site the excess land Village Chokdi was not available and there was also shortage of land at Village Gamph, the report was submitted by Talati-cum-Mantri to the Mamlatdar and the Mamlatdar considered the matter under Section 21 of the Act being Ceiling Case No.3/1994 and passed the order on 30th April, 1994, whereby the land which was purchased by the petitioner was declared as excess land to be received by the State Government. The petitioner carried the matter in appeal before the Dy. Collector and the said appeal came to be partly allowed, but the order

of the Mamlatdar was confirmed. The petitioner further carried the matter in revision before the Tribunal and the Tribunal as per the order dated 7.10.1996 dismissed the revision and it is under these circumstances, the present petitions.

5. I have heard Mr.Gandhi, learned Counsel appearing for the petitioners and Mr.Chhaya, learned AGP for the State Authorities.

6. It has been contended on behalf of the petitioners that for similarly situated persons, the Tribunal has passed two self-contradictory orders inasmuch as in the matter of one other purchaser of the retainable land namely; Jairambhai, who preferred revision No.195 of 1995, the Tribunal remanded the matter on the ground of non-observance of principles of natural justice, whereas in the case of the the petitioners, the matter was not remanded and, therefore, it has been submitted that the impugned orders passed by the Tribunal deserve to be quashed and set aside.

7. The contention raised on behalf of the

petitioners, if examined, it appears that it is not in dispute that the petitioners were not heard by the Mamlatdar before modifying the earlier order for declaring the land as excess land. It further appears that in case of Jairambhai Thakkarbhai the land was purchased by the said person on 1.5.1979 and as the declaration for excess was on 25.9.1990, the Tribunal found that the opportunity of hearing was required to be given if the land which was held by the said applicant namely; Jairambhai was to be declared as excess land. In cases of both the petitioners, more or less the same situation for non-observance of the principles of natural justice at the time when the Mamlatdar passed the order would prevail. If the order of the Mamlatdar is considered, and as recorded hereinabove, vide order dated 25.9.1990 so far as Village Gamph is concerned only land beaering Survey No.101 admeasuring 2 acres and 16 gunthas was declared as excess land. Therefore, it cannot reasonably be construed that as the other land held by Respondent No.2

was not declared excess land and it would have fallen in the category of retainable land for self-cultivation. The land, which was purchased by the petitioner, bearing Survey No.105 (Old No.106) admeasuring 2 acres and 16 gunthas, which in any case, was not declared as excess land as per the order dated 25.9.1990 for the land at Village Gamph. So far as the purchase of the land by the petitioner of SCA No.10157 of 2006 is concerned, he purchased the land bearing Survey No.100 (old No.101) admeasuring 5 acres and 59 gunthas as against the same vide order of the Mamlatdar dated 25.9.1990 the land admeasuring 2 acres and 60 gunthas of Survey No.100 (Old No.101) was declared as excess land. It does not transpire on record as to whether the very portion of the land bearing Survey No.101, which was declared as excess land was purchased by the petitioner, but even if it is considered that the same portion of the land was declared as excess land, then also the land which was purchased by the petitioner is exceeding the area, which was declared as excess

land of Survey No.100 (Old No.101) at Village Gamph. Therefore, as the land, which was purchased by the petitioner was not declared as excess land, subject to the verification of the portion of Survey No.100 (Old No.101) admeasuring 2 acres ad 16 gunthas, opportunity of hearing was requited to be given by the Mamlatdar to the concerned petitioner before declaration of the land as excess land of Respondent No.2 for observance of principles of natural justice. Therefore, it appears that the same situation was prevailing even in cases of both the petitioners. In spite of the same, the Tribunal has in one case of Jairambhai Thakkar remanded the matter, whereas in case of both the petitioners, the matter was not remanded and the revisions were dismissed. Therefore, it can be said that by taking two contrary views in the same fact situation for application of the principles of natural justice, the Tribunal has committed error of jurisdiction in exercising the revisional power. Even otherwise also, as the petitioners were to be directly affected by

the order of the Mamlatdar for declaration of the land as excess land, which was held by Respondent No.2, the petitioners were required to be heard and it was required to be considered by the Mamlatdar if the transfer has taken place after the declaration of the land as excess land from amongst the retainable lands, where the power can be exercised and, if yes, on what ground. The aforesaid aspects are also not considered by the Mamlatdar and, therefore, the Tribunal ought to have remanded the matter to the Mamlatdar after giving opportunity of hearing to the petitioners. It appears that if the order passed by the Tribunal, is not interfered with, it would cause injustice to the petitioners since the land was purchased by the petitioners after the declaration of the land as excess land from the portion of the retainable land. Therefore, there is additional ground to interfere with the order passed by the Tribunal.

8. In view of the above, the impugned order passed by the Mamlatdar, its confirmation thereof by the Dy. Collector and by the Tribunal are

quashed and set aside, so far as they relate to the land purchased by the petitioner, but with the further direction that the Mamlatdar shall give opportunity of hearing to the petitioners and shall pass a fresh order in accordance with law. However, it is clarified that the Mamlatdar shall finalise all questions and decide the matter in accordance with law.

9. The petitions are allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

5.2.2007 **(Jayant Patel, J.)**

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